No. 96-890

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

BETTY-LOUISE FELTON, ET AL.,
Cross-Petitioners,

v.

RACHEL AGOSTINI, ET AL.,
Cross-Respondents,

and

CHANCELLOR OF THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK, ET AL.,
Cross-Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF IN OPPOSITION TO THE CROSS-PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether there is any reason why the parties cannot invoke Rule 60(b) of the Federal Rules of Civil Procedure to seek relief from the continuing injunction entered after this Court's decision in *Aguilar v. Felton*.

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The Cross-Petition for a Writ of Certiorari raises the question whether Rule 60(b) of the Federal Rules of Civil Procedure was properly invoked by the petitioners to seek relief from the judgment in this case. The cross-petition should be denied both because it is unnecessary and because the question it presents is insubstantial.

I. THE CROSS-PETITION IS UNNECESSARY

The respondents/cross-petitioners prevailed fully in the district court and in the court of appeals: the district court denied the petitioners' Rule 60(b) motions, and the court of appeals affirmed. The cross-petition does not attack any aspect of the judgment, but only suggests another reason why the judgment should not be disturbed. Under these circumstances, it is clear that a cross-petition is unnecessary.

A cross-petition is necessary if a party seeks to modify the judgment below in whole or in part. *See Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548, 560 n.11 (1976). But a cross-petition is not necessary to enable a prevailing party "to defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals." *Washington v. Yakima Indian Nation*, 439 U.S. 463, 476 n.20 (1979). It is also well-established that a cross-petition is unnecessary to enable a party to attack the reasoning of the court below. *See, e.g., Massachusetts Mutual Life Insurance Co. v. Ludwig*, 426 U.S. 479, 480-81 (1976). A cross-petition is unnecessary in this case to present an additional reason why the courts below were correct in denying the Rule 60(b) motions.

II. THE QUESTION PRESENTED IN THE CROSS-PETITION IS INSUBSTANTIAL

The cross-petition attempts to question the procedure that was invoked by the petitioners and sanctioned by the courts below. The question it attempts to raise, however, is somewhat unclear. Rule 60(b) authorizes a motion for relief from the judgment, and it authorizes the granting of such relief for "any . . . reason justifying relief from the

operation of the judgment." Fed. R. Civ. P. 60(b)(6). Although the respondents/cross-petitioners attempt to cast their argument in different terms, in essence their argument is simply that there are not sufficient grounds to warrant relief under Rule 60(b).

The arguments advanced in the cross-petition were incorporated into the respondents' Brief in Opposition, where they properly belong. *See* Br. Opp. 12. The petitioners responded to those arguments in their Reply Brief in Support of the Petition. Instead of repeating their arguments in this brief, petitioners respectfully refer the Court to that Reply Brief. As demonstrated there, the procedural objection respondents/cross-petitioners attempt to raise is insubstantial.

CONCLUSION

For the foregoing reasons, the cross-petition should be denied.

Respectfully submitted,

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